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In re Application of
KOSTIAINEN *et al*
U.S. Application No.: 10/579,225
PCT No.: PCT/FI2004/000683
Int. Filing Date: 15 November 2004
Priority Date: 14 November 2003
Attorney Docket No.: Q94898
For: METHOD AND APPARATUS FOR
MASS SPECTROMETRIC ANALYSIS

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 24 March 2008.

BACKGROUND

On 12 May 2006, applicants filed papers to enter the national stage of PCT/FI2004/000683.

On 24 March 2008, applicants filed the subject petition which was accompanied by, *inter alia*, a declaration signed by three of the four named inventors on behalf of the nonsigning inventor; a \$130.00 petition fee; a declaration by Anu Leinonen; exhibits A - D; and authorization to charge any required fees to counsel's Deposit Account.

DISCUSSION

Applicants claim that co-inventor, Seppo Martilla, refuses to cooperate and have filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventors cannot be located or refuse to cooperate; (3) a statement of the last known addresses of the nonsigning joint inventors; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors.

Applicants submitted a \$130.00 petition fee. The petition fee is \$200.00. The \$70.00 difference has been charged to Deposit Account No. 19-4880 as authorized. The last known address of the nonsigning inventor is listed. A declaration signed by three of the four named inventors was provided. This declaration complies with 37 CFR

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1.497(a) and (b). Hence, items (1), (3) and (4) are satisfied.

Regarding item (2), the declaration by Mr. Leinonen declares that he submitted a complete copy of the subject application to the nonsigning inventor on 08 May 2006. Mr. Leinonen states that the inventor expressly refused to cooperate in the subject application the next day (09 May 2006) via the telephone.

A review of exhibit B (the English translation of the cover letter dated 08 May 2006) does not indicate that a complete copy of the application (specification, claims and drawings) were included in the documents forwarded to Mr. Martilla. There is also no documentary evidence (such as postal receipts, etc.) of receipt of the documents by the nonsigning inventor. The method used by Mr. Leinonen to forward the documents to the nonsigning inventor is not even discussed in his declaration.

As indicated in section 409.03(d) of the MPEP, 37 CFR 1.47(a) applicants are required to provide a complete copy of the subject application (specification, claims and drawings) to the nonsigning inventor before any refusal can be accepted. Documentary evidence that the nonsigning inventor received these documents are also required.


The statements by Mr. Leinonen submitted in the initial petition without corroborating evidence is not sufficient. As such, the purported oral refusal by Mr. Martilla is not accepted. Item (2) of 37 CFR 1.47(a) is not yet complete.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web, by facsimile to (571) 273-0459, or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450.


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